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17 as Agent for the 1995 Master Lease Participants

18 **UNITED STATES BANKRUPTCY COURT**  
19 **DISTRICT OF ARIZONA**  
20 -----

21 **In re**

22 **BCE WEST, L.P., et al.,**

23 **Debtors.**

24 **Chapter 11 Case Nos.**  
25 **98-12547 through**  
26 **98-12570 (PHX-CGC)**

27 -----  
28 **OBJECTION OF CITIZENS BANK OF RHODE ISLAND,**  
29 **AS AGENT FOR THE 1995 MASTER LEASE PARTICIPANTS**  
30 **TO MOTION BY LIFTPAK SERVICES, L.C.**

31 Citizens Bank of Rhode Island (“Citizens”), as Agent for the 1995 Master Lease Participants,  
32 by Osborn Maledon P.A. and Morgan, Lewis & Bockius LLP, its attorneys, hereby objects to the  
33 motion of Liftpak Services, L.C. (“Liftpak”), filed August 6, 1999, [Dkt # [1105](#)] which seeks (i) relief  
34 from the automatic stay, (ii) abandonment of property, (iii) immediate payment of an administrative  
35 claim, and (iv) immediate payment of a claim pursuant to Bankruptcy Code §365, and respectfully  
36 states:

37 1. Citizens is the Agent for Debtors’ 1995 Master Lease Participants (the “Participants”).  
38 The Participants have a security interest in, among other things, certain of Debtors’ machinery and  
39 equipment pursuant to the 1995 Master Lease Agreement as security for an indebtedness of  
40 approximately \$55 million.

1           2.       Pursuant to an order of this Court dated December 30, 1998 [DE 465], Debtors were  
2 authorized to sell, outside of the ordinary course of business and free and clear of liens, certain  
3 equipment that was no longer necessary for the Debtors' business as a result of store closings.

4           3.       Pursuant to the December 30, 1998 order, the equipment in closed store locations was  
5 sold by Debtors free and clear of liens with the liens to attach to the proceeds, which proceeds were  
6 to be deposited in an escrow account (the "Escrow Account") maintained at the Bank of America for  
7 the respective benefit of those parties claiming a security interest therein (Bank of America, GE  
8 Capital Corporation and Citizens as Agent for the Participants).

9           4.       By motion filed August 6, 1999, Liftpak alleges that it leased 12 trash compactors to  
10 Debtors, that 10 of the trash compactors were sold by Debtors and 2 of the trash compactors were  
11 stolen. As a result of the foregoing allegations, Liftpak asserts various purported claims against  
12 Debtors, as well as the secured creditors with interests in the Escrow Account.

13           5.       For the reasons hereinafter set forth, Citizens objects to the relief sought by Liftpak  
14 insofar as it concerns Citizens and the Escrow Account:

15           (i)       To the extent Liftpak seeks money from Citizens (or the other secured creditors or  
16 the Escrow Account), such relief cannot be obtained by way of motion. Rather, such  
17 relief may only be obtained by an adversary proceeding pursuant to Bankruptcy Rule  
18 7001, which Liftpak has not commenced.

19           (ii)       Even if one were to assume that the factual allegations of Liftpak's motion are true  
20 (which Citizens disputes), there is no legal theory by which the secured parties or the  
21 Escrow Account could be charged for more than the actual proceeds received from  
22 the sale of Liftpak's equipment, if any.

23           (iii)       Notwithstanding the foregoing, Liftpak seeks to hold the secured parties or the  
24 Escrow Account liable for what it alleges to be the full amount of its loss. Clearly,  
25 the secured parties are not liable for Debtors' alleged conduct.

26           (iv)       At the very least, Liftpak would have to establish what, if any, sale proceeds were  
27 received by the secured parties or the Escrow Account from Liftpak's equipment.  
28 Absent such proof. Liftpak could not assert a claim against the secured parties or the  
Escrow Account.

(v) In all events, material issues of fact exist including, whether the disposal of some or all of Liftpak's equipment occurred prepetition and what, if any, proceeds from the sale of Liftpak's equipment were received, and by whom.

**WHEREFORE**, Citizens respectfully requests that Liftpak's motion, insofar as it purports to assert claims against Citizens or the Escrow Account, be dismissed by the Court.

Dated: August 23, 1999

Respectfully submitted,

**OSBORN MALEDON P.A.**

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